

**City of New Orleans, Louisiana**  
**Request for Proposals**  
**COVID-19 Mass Feeding Initiative**  
**June 1, 2020**

**Request for Proposals:** The City of New Orleans (“City”) desires to obtain proposals from the most qualified firm(s) to assist the City with a COVID-19 Mass Feeding Initiative by performing professional services as detailed in Attachment “A” to support NOHSEP with the procurement of a supplier to provide and deliver nutritious meals to food insecure City of New Orleans constituents affected by COVID-19 potentially using FEMA grant and City General funds. As provided below, and incident to City Charter Section 6-308(5) and Executive Order LC 20-01, it requests proposals from experienced firms to provide the needed services.

**Instructions:** Under the authority of the Governor under Proclamation 59 JBE 2020. Proposers shall submit the following electronically via Email to [Klwells@nola.gov](mailto:Klwells@nola.gov) , not later than **June 10, 2020 by 12:00 PM (CT):**

- a. The proposer’s digitally signed proposal, in PDF format marked ***“COVID-19 Mass Feeding Initiative Technical Proposal”***
- b. The proposer’s related cost proposal included as a separate file, marked ***“COVID-19 Mass Feeding Initiative Price Proposal”***;
- c. A digitally signed cover letter including the company’s name, address and primary contact for the proposal. The primary contact information shall include submitter name, telephone, and email address.
- d. Proposers must complete all required attachments and submit along with their electronic submissions.
- e. Proposers should ensure to notate in the subject line of the email, the name of the proposer and the number and the title of the RFP. This information is critical to the Bureau of Purchasing to identify proposals.

Proposers should clearly demonstrate the applicant’s qualifications to perform the needed services and attend all factors applicable in a professional relationship. Proposers should include detailed resumes or curricula vitae for the principals performing the services. Copies of the solicitation and related information are available from the City’s purchasing website at <https://nola.gov/purchasing/brass/>.

The City will not accept proposals submitted by fax. All solicitations must be received by the City on or before the Deadline. The City will not accept proposals recieved after the said deadline.

**Anticipated Proposal Timetable**

RFP Release	June 1, 2020
Pre-Proposal Conference	June 3, 2020
Deadline for Submitting Questions	June 4, 2020
Proposal Submission	June 10, 2020
Evaluation Committee Selection	On or about June 12, 2020
Notification	On or about June 14, 2020

**A Non-Mandatory Pre-Proposal Conference will be held on June 3, 2020 at 2:00 PM (CT) via teleconference call (teleconference number and access code will be provided).**

If the City identifies a likely service provider, it may negotiate a final agreement with the provider and fix the relationship by Professional Services contract. The contract will contain the standard City provisions shown in Attachment “B” and the “Disadvantaged Business Enterprise” (“DBE”) provisions shown in Attachment “C.” A DBE goal of 35 percent has been established for this RFP. The Proposers shall agree to use its best efforts, as determined by the DBE Compliance Officer to assure that all respondents comply with the factors set forth in the DBE Program, to meet the goal for DBE participation in the performance of this solicitation.

Please direct all questions related to DBE compliance prior to the Delivery Deadline to *Office of Supplier Diversity, 1340 Poydras Street, 10th Floor, New Orleans, LA 70112, telephone: 658-4220, email: [supplierdiversity@nola.gov](mailto:supplierdiversity@nola.gov).*

**By responding to this RFP, Proposer agrees to the City’s required provisions as provided in Attachments “B” and therefore waives any future right to contest the required provisions.**

1. **Services Needed**: Attachment “A”.
2. **Selection Committee**: The CPO must establish a Selection Committee with relevant subject-matter expertise in reviewing and evaluating proposals to the RFP. Each proposal to the RFP must be evaluated by a committee of five individuals consisting of:
  - The manager of the User Entity requesting the service, or his designee;
  - The Chief Administrative Officer, or his designee;
  - The employee who will manage and monitor the contract;
  - A professional from within local government who possesses expertise in the relevant field; and
  - The Chief Financial Officer or his designee.

The Selection Committee shall first evaluate the proposals on the basis of criteria other than price. The members on the Selection Committee shall either complete the numerical grading and provide a written explanation stating the reasons for the rating for each criteria, or if using the wholly qualitative evaluation criteria, the members shall provide a rating of a proposal as highly advantageous, advantageous, not advantageous, or unacceptable and state the reasons for the rating for each criteria.

3. **Selection**: The City will select a Proposer generally according to the procedures described in Executive Order LC 20-01. The Selection Committee will first evaluate and rank responsive RFP Responses on the criteria listed below and provide an assessment of that score. A Proposer may receive the maximum points, a portion of this score, or no points at all, depending upon the merit of its response, as judged by the Selection Committee in accordance with:

### Technical Criteria

- (25 Points) Experience with and a demonstrated ability to deliver similar projects on time and within budget;
- (15 Points) Proposal includes a detailed vision for how this project will be managed and delivered;
- (5 Points) Team capacity, skills, and technical expertise; and
- (5 Points) Demonstrable experience implementing tools that enhance project delivery and monitoring.

### **MINIMUM REQUIREMENTS:**

**Proposals which do not meet the required personnel requirements in Attachment A – Needed Services will be deemed nonresponsive.**

### DBE Participation

To ensure the full participation of DBE's in all phases of the City's procurement activities, all Proposers at time of proposal submission shall complete and submit a DBE Participation Plan. If a DBE Participation Plan is not submitted, it shall be determined that the proposer was non-responsive to the DBE provisions and the proposal will not be evaluated by the selection committee.

- (5 Points) Proposal complies with contract DBE participation goal of **35%** or will conduct good faith efforts to do so.
- (5 Points) Proposal submitted a quality DBE Participation Plan that includes innovative strategies and approaches to achieve and maintain compliance over the contract term, including firm's past performance on meeting DBE goals, technical assistance and supportive services designed to increase participation and build capacity in the DBE community.

### Price Proposal

The Selection Committee will then evaluate and rank responsive Proposals on Price. **Price proposals must be included as a separate file marked "Price Proposal"**. A Proposer may receive the maximum points, a portion of this score, or no points at all, depending upon the merit of its Price Proposal, as judged by the Selection Committee in accordance with:

- (40 Points) Cost

### Shortlist

The City at its sole discretion may recommend a selection of Proposers for a short list based on the overall ranking.

During the review of any proposal, the Evaluation Committee may:

- Conduct reference checks relevant to the solicitation to verify any and all information, and rely on or consider any relevant information from such cited references or from any other sources in the evaluation of proposals. This will include City past Performance Reviews;
- Seek clarification of a proposal or additional information from any or all proposers and consider same in the evaluation of proposals;
- Waive any requests or requirements if such waiver is in the best interest of the City; and
- Request interviews/ presentations with any, some or all proposers to clarify any questions or considerations based on the information included in proposals.

4. **Ownership**: All proposals and/or documentation submitted therewith are City property for all purposes. Proposers will clearly mark documents or information claimed exempt from public records disclosure and specifically justify the exemption. The City will not credit any blanket exemption claims lacking specific justification. The City does not guarantee the confidentiality of submissions.

5. **Effect**: This RFP and any related discussions or evaluations by anyone create no rights or obligations whatsoever. The City may cancel or modify this solicitation at any time at will, with or without notice. The contract executed by the City and the selected Proposer, if any, is the exclusive statement of rights and obligations extending from this solicitation.

6. **Point of Contact**: All correspondence and other communications regarding this procurement should be directed to the attention of: Kai Wells, City of New Orleans, Bureau of Purchasing, 1300 Perdido Street, 4W07, New Orleans, Louisiana 70112.

Substantive questions must be submitted by Proposers in writing to the person at the address provided above or emailed to [klwells@nola.gov](mailto:klwells@nola.gov) no later than) **June 4, 2020 by 4:00 PM.**

Any request received after that time may not be reviewed for inclusion in this RFP. The request shall contain the requester's name, address, and telephone number.

The Bureau of Purchasing will issue a response to any inquiry if it deems it necessary, by written addendum to the RFP, posted on the City's website, and issued prior to the RFP's Delivery Deadline. The Proposers shall not rely on any representation, statement or explanation other than those made in this RFP or in any addenda issued. Where there appears to be a conflict between this RFP and any addendum issued, the last addendum issued will prevail.

From the time of advertising, and until the final award, there is a prohibition on communication by Proposers (or anyone on their behalf) with the City's staff, Selection Committee members and elected officials. This does not apply to oral communications at Pre-Proposal conferences, oral presentations before evaluation committees, contract negotiations, or communications at any time with any City employee or elected official regarding matters not concerning this RFP.

Breaking the established prohibition on communication may result in a disqualification of the proposal.

7. **Proposal Review**: In accordance with the Mayor's Executive Order, LC 20-01, the review committee will evaluate each proposal submitted. The City will make every effort to administer the proposal process in accordance with the terms and dates discussed in the RFP. However, the City reserves the right to modify the

qualification process and dates as deemed necessary.

The City may request an online demonstration of specific vendors' solutions prior to the qualifications review completion date. Proposers should be prepared to provide such a demonstration in a timely fashion.

8. **In-Process Technical Review:** The selected Proposer's performance of the services shall be subject to in-process technical review by the City's Technical Representative or such other person(s) as may be designated in writing by Project Delivery Unit provided such actions are not unreasonable and does not interfere with the progress of the work.

9. **Conflict of Interest:** The nature of the proposed services for the RFP may lead to a conflict of interest for firms that are currently under contract with the City or those that may seek contract opportunities in the future. The City considers the following situations as potential conflicts of interest that will not be allowed with the selected firm(s):

- a. Directly or indirectly participating in, managing, or overseeing any consultant selection procurement process in which the selected firm is competing as a consultant or subconsultant.
- b. Directly or indirectly influencing any employee, staff member or other individual participating in any consultant selection procurement process in which the selected firm is a consultant or sub-consultant.
- c. Directly or indirectly participating in, managing or overseeing any City contract that is with the selected firm, regardless of whether the involvement of the selected firm in the contract is as a consultant or sub-consultant. Among other things, this includes approving changes in the schedule, scope, deliverables or invoices.

10. **Required Attachments: Proposers are required to complete the following Attachments and submit along with their electronic Proposal submission (Not submitting the required attachments may result in your response being deemed non-responsive):**

- Attachment "C" **DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN**
- Attachment "F" **CITY OF NEW ORLEANS CONFLICT OF INTEREST DISCLOSURE AFFIDAVIT**

All other Attachments are supplied by the City as information. The following Attachments will only be requested of the successful Proposer prior to obtaining a contract:

- Attachment "D" Tax Clearance Certificate
- Attachment "E" Identification of Subcontractors
- Attachment "G" Affidavit of Compliance with Hiring Requirements"

Information Only:

- Attachment “H” Sample Contract Agreement
- Attachment “J” HUD Compliance Provisions
- Attachment “K” Special Compliance Conditions for FEMA

**FAILURE TO COMPLETE THE REQUIRED ATTACHMENTS MAY RESULT IN THE DISQUALIFICATION OF A PROPOSAL.**

**11. Proposal and Submission Requirements:**

To achieve a uniform review process and obtain the maximum degree of comparability, it is required that the proposals be organized in the manner specified below. Proposal shall include all of the following:

**1) Title Page**

Show the RFP number and subject, the name of your firm, address, email address, telephone number(s), facsimile machine number(s), name of contact person and date.

**2) Table of Contents**

Clearly identify the materials by section, page number, and tabs.

**3) Letter of Transmittal (Limited To One Page)**

Briefly state your firm’s understanding of the services to be performed and make a positive commitment to provide services as specified. Give the name(s) of the person(s) who is/ are authorized to make representations for your firm, their title, address, email address, telephone number(s) and facsimile number(s).

**4) Proposal Contents**

Proposals should contain a clear and comprehensive response to all requirements/ questions in the order contained herein:

1. Approach;
2. Past Experience/ Qualifications;
3. Resumes (in standard resume or narrative format); and
4. Required Forms & Attachments

**12. Insurance:**

- A. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Contractor will maintain the following insurance in full force and effect for the duration of the work under this Agreement. Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with the Contractor’s scope of work under the

Agreement.

- B. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City:
- C. Minimum Requirements:
- Workers' Compensation & Employers Liability Insurance in compliance with the applicable Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than \$1,000,000.
  - Commercial General Liability Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, abuse and molestation and any other type of liability for which this Agreement applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate.
  - Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles.
  - Important: The obligations for the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Contractor from any liability incurred as a result of their activities/operations in conjunction with the Contractor's obligations and/or Scope of Work.
  - Additional Insured Status: The Contractor and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming the City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as "Additional Insureds" on the CGL policy with respect to liability arising out of the performance of this agreement. General liability insurance coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).
  - Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein. The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.

## **12. Disadvantaged Business Enterprise (DBE) Requirements**

### **I - DBE PROGRAM COMPLIANCE**

The requirements of the City of New Orleans ("City") Disadvantaged Business Enterprise ("DBE") Program apply to this Agreement. It is the policy of the City to practice nondiscrimination based on social and economic disadvantage, race, color, gender, disability and national origin in the award and performance of contracts.

In consideration of this policy and pursuant to Division 2 of Article IV of Chapter 70 of the Code of the City, the City enacted the DBE Program for all City contracts.

Contractor agrees to use its best efforts to fully and completely carry out the applicable requirements of the City's DBE Program in the award and administration of this Agreement, including without limitation, all reporting requirements and established DBE participation percentage. The Contractor's failure to carry out these requirements, as determined in good faith by the City's Office of Supplier Diversity ("OSD"), shall be



deemed a material breach of this Agreement. This material breach may result in the termination of this Agreement and/or the pursuit of any other remedies available to the City under any applicable law, ordinance, or rule, including, but not limited to those set forth in the City's Policy Memorandum for the DBE Program

## **II - DBE CONTRACT GOAL**

The requested DBE Contract Goal is listed in the contract section of the invitation to bid.

NOTE: All non-public works contracts have a default goal of 35% DBE participation.

Participation shall be counted toward meeting the contract goal based on the following:

- 1.** Only business entities certified as SLDBE or LAUCP-DBE are counted toward the contract DBE participation goal.
- 2.** The Bidder/ Proposer may count only the total dollar value of the subcontract awarded to certified DBE subcontractor/supplier(s) toward the contract goal.
- 3.** A Bidder/ Proposer can count 100 % of the DBE's participation provided that the DBE has committed to performing at least 51% of the work with its own forces.
- 4.** Bidder/Proposer may count 100 % of DBE Manufacturer Supplier's participation and 60 % of DBE Non-Manufacturer supplier's participation toward its contract goal.
- 5.** When the Bidder/Proposer is in a joint venture with one or more DBE business entities, the OSD, after reviewing the joint venture agreement, shall determine the percent of participation that will be counted toward the contract goal.
- 6.** Bidder/Proposer may count toward its contract goal only those DBE subcontractors/suppliers performing a Commercially Useful Function.

"DBE Commercially Useful Function means" a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the DBE firm by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the DBE firm is responsible. In determining whether a certified firm is performing a commercially useful function, factors including, but not limited to, the following shall be considered:

- a.** Whether the business entity has the skill and expertise to perform the work for which it is being utilized and possesses all necessary licenses;
- b.** Whether the firm is in the business of performing, managing, or supervising the work for which it has been certified and is being utilized;
- c.** Whether the DBE subcontractor is performing a real and actual service that is a distinct and verifiable element of the work called for in a contract.
- d.** Whether the DBE subcontractor performed at least thirty percent (30%) of the cost of the subcontract (including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own forces.

## **III - DBE DIRECTORY**

Contractors may only utilize certified SLDBE and/or Louisiana Unified Certification Program (LAUCP) DBE firms from the following lists to meet the City's DBE Program goals.

- a.** Contractors agree to utilize the City's SLDBE directory of certified firms as a first source when searching for certified DBE business entities. The SLDBE directory includes entities certified through Sewerage and Water Board of New Orleans, New



Orleans Aviation Board and Harrah's New Orleans. The SLDBE directory is available at [www.nola.gov](http://www.nola.gov).

- b. The Louisiana Unified Certification Program ("LA UCP") directory is available at [www.dotd.louisiana.gov](http://www.dotd.louisiana.gov).

Information on locating these directories may also be requested from the OSD at [supplierdiversity@nola.gov](mailto:supplierdiversity@nola.gov).

#### IV - GOOD FAITH EFFORT POLICY

In accordance with Sec.70-461 of the City Code, the City shall reject any bid and shall not award, enter into or amend any contract that is not supported by documentation establishing that the Bidder/Proposer has met the applicable contract DBE participation Goal or made Good Faith Efforts to the applicable contract DBE participation goal.

Good Faith Efforts are steps taken to achieve a contract DBE participation goal or other requirements which, by their scope, intensity and usefulness demonstrate the Bidder's or Proposer's responsiveness to fulfilling the City's DBE Program goals prior to the award of a contract, as well as the Contractor's responsibility to put forth measures to meet or exceed the contract DBE participation goal throughout the duration of the contract.

The OSD shall be responsible for determining whether a Bidder/Proposer has made their best efforts to achieve the DBE Program contracting objectives. In making this determination, the DBE Compliance Officer shall consider the following factors:

**A. SPECIFIC PORTIONS OF WORK IDENTIFIED FOR DBE SUBCONTRACTOR:**

- i. Bidder/ Proposer listed all selected scopes or portions of work to be performed by DBEs in order to increase the likelihood of meeting the contract goal for the project
- ii. Bidder/ Proposer listed the estimated value of each scope or portions of work identified.

**B. NOTIFYING CERTIFIED DBEs OF CONTRACTING OPPORTUNITIES:**

- i. Bidder/ Proposer contacted the OSD to request submission of subcontracting opportunities on the DBE Opportunities page.
- ii. Bidder/ Proposer included a copy of each announcement or notification.

**C. INITIAL SOLICITATION & FOLLOW-UP:**

- i. Bidder/ Proposer listed all certified DBE firms that received written notification of work items to be subcontracted and documented the certified firm's response.
- ii. Bidder/ Proposer included copies of the written notice(s) sent to certified firms.

**D. NEGOTIATE IN GOOD FAITH:**

- i. Bidder/ Proposer provided an explanation for any rejected DBE bid or price quotation.
- ii. Bidder/ Proposer included a copy of the written rejection notice including the reason for rejection to the rejected DBE firm.

If a Bidder/ Proposer fail to submit documented Good Faith Efforts as outlined, the bid shall be considered non-responsive.

The OSD may take into account the performance of other Bidders/Proposers in meeting the contract

DBE participation goal and may, if deemed advisable, request further information, explanation or justification from any Bidder/ Proposer. For example, Bidder's past performance on similar contracts with similar scopes and/or a Proposer's prior history utilizing DBEs will also be taken in consideration when determining Good Faith Efforts.

Good Faith Efforts shall be monitored throughout the life of the contract and evaluated on a case- by-case basis in making a determination whether a Bidder or Proposer is in compliance with the Good Faith Effort policy.

To obtain a copy of the Good Faith Effort Policy contact OSD at [supplierdiversity@nola.gov](mailto:supplierdiversity@nola.gov).

## **V - REQUIRED DBE FORMS for BIDs/RFPs/RFOs**

### **A. BIDs:**

In accordance with Louisiana Public Bid Law, the two apparent lowest bidders on an invitation to bid shall complete and submit all required post bid documents within three (3) business days of the bid opening. If the required post bid documents are not received within three (3) business days of the bid opening it shall be determined that bidder was non-responsive.

The following DBE documents must be received within three (3) business days of the bid opening:

1. DBE Compliance Form-1: This form is used to establish your DBE commitment on a City of New Orleans bid, RFP or solicitation response. The Bidder shall provide a list of all proposed DBE subcontractor(s).

If the Bidder has attained the amount of DBE participation to meet the contract goal, only submit DBE Compliance Form-1.

2. DBE Compliance Form-2: This form is used to document Good Faith Efforts when the amount of DBE participation committed on DBE Compliance Form-1 is less than the Contract Goal. The Bidder shall provide all required supporting documentation of demonstrated Good Faith Efforts as specified on DBE Compliance Form-2.
3. After receipt and review of the required post-bid documents, the OSD will determine if the Bidder has provided valid DBE Compliance Forms and (if applicable) evidence of demonstrated Good Faith Efforts.

Thereafter, the Bidder/ Contractor shall be bound by the established percentage, as approved by the OSD.

### **B. Request for Proposals ("RFP") / Request for Qualifications ("RFOs"):**

To ensure the full participation of DBE's in all phases of the City's procurement activities, all Proposers at time of proposal submission shall complete and submit a DBE Participation Plan.

1. **DBE Participation Plan (Attachment "C"):** A completed DBE Participation Plan shall be considered a methodology on how the Proposer plans to meet the contract DBE participation goal if awarded the project.
  - a. If a DBE Participation Plan (Attachment "C") is not submitted, it shall be determined that the Respondent was non-responsive to the DBE provisions and the proposal will not be evaluated by the selection committee.
2. Within ten (10) days of the City's issuance of the Notice to Award letter, the selected Proposer shall complete and submit a DBE Compliance Form-1: This form is used to establish

your DBE commitment on a City Bid, RFP or solicitation response. The selected Proposer shall provide a list of all proposed DBE subcontractor(s).

- a. If the amount of DBE participation committed on DBE Compliance Form-1 is less than the Contract Goal, the selected Proposer shall complete DBE Compliance Form-2: This form is used to document Good Faith Efforts when the amount of DBE participation committed on DBE Compliance Form-1 is less than the contract DBE participation goal. The selected proposer shall provide all required supporting documentation of demonstrated Good Faith Efforts as specified on DBE Compliance Form-2.

The OSD shall review the contents of all required DBE Compliance Forms and may, if deemed advisable, request further information, explanation or justification from any Bidder/ Respondent. Thereafter, the Contractor shall be bound by the established percentage, as approved by the OSD.

## **VI - CONTRACTOR COOPERATION**

The Contractor shall:

1. Designate an individual as the “DBE Liaison” who will monitor the Contractor’s DBE participation as well as document and maintain records of “Good Faith Efforts” with DBE subcontractors/ suppliers (“DBE Entities”).
2. Execute written contracts with DBE Entities that meet the applicable DBE goals.
  - a. The Contractor shall provide the DBE Compliance Officer (“DBECO”) with copies of said contracts within thirty (30) days from the date the Agreement is fully executed between the City and the Contractor.
  - b. The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.
3. Establish and maintain the following records for review upon request by the OSD:
  - a. Copies of written contracts with DBE Entities and purchase orders;
  - b. Documentation of payments and other transactions with DBE Entities;
  - c. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of “Post-Award Good Faith Efforts” for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;
  - d. Any other records required by the OSD.

The Contractor is required to maintain such records for three (3) years after completion or closeout of the Agreement. Such records are necessary to determine compliance with their DBE obligations.

4. Post monthly payments and submit regular reports to the DBECO as required via the online “Contract Compliance Monitoring System” or other means approved by the OSD.
  - a. The Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, “DBE Utilization” reports shall be due on or before the fifteenth (15<sup>th</sup>) day of each month until all DBE subcontracting work is completed.
  - b. Reports are required even when no activity has occurred in a monthly period.

- c. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
  - d. The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.
5. Conform to the established percentage as approved by the OSD.
- a. The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
  - b. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
  - c. The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

## **VII - POST-AWARD MODIFICATION**

The OSD may grant a post-award modification request if:

- a. For a reason beyond the Contractor's control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Contractor shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the performance of the Agreement; or
- b. The Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Contractor shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

## **VIII - MONITORING DBE PARTICIPATION**

To ensure compliance with DBE requirements during the term of the Agreement, the DBECO will monitor the Contractor' use of DBE subcontractors/suppliers ("**DBE Entities**") through the following actions:

- 1. Job site visits;
- 2. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;
- 3. Routine audits of contract payments to all subcontractors;
- 4. Reviewing of records and reports; and/or
- 5. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Contractor

or DBE Entities.

#### **IX - FAILURE TO COMPLY**

If the DBECO determines in good faith that the Contractor failed to carry out the requirements of the DBE Program, such failure shall be deemed a material breach of this Agreement. This material breach may result in the termination of the Agreement and/or the pursuit of any other remedies available to the City under any applicable law, ordinance, or rule, including, but not limited to those set forth in the City's Policy Memorandum for the DBE Program.

**All DBE Compliance forms are maintained by the OSD and are subject to change.**

**Please contact the OSD at [supplierdiversity@nola.gov](mailto:supplierdiversity@nola.gov) to request a copy of all DBE referenced documents.**

END OF DOCUMENT

**City of New Orleans, Louisiana**  
**Request for Proposals**  
**COVID-19 Mass Feeding Initiative**  
**June 1, 2020**

**Attachment “A”**

**NEEDED SERVICES**

The COVID-19 crisis has generated substantial food insecurity across New Orleans. Particularly vulnerable groups include individuals who have contracted COVID-19, laid off workers, families with children, senior citizens and adults who are homebound. Neighborhood food pantries, non-profit organizations and school feeding programs are operating throughout the City but they are struggling to meet the need. The overarching goal of this program is to provide food insecure individuals affected by COVID-19 with nutritious meals while also providing economic stimulus to commercial kitchens, local restaurants and their employees.

In order to alleviate challenges for food insecure families across New Orleans affected by COVID-19, a selected Contractor will partner with a commercial food distributor or local restaurants to prepare approximately 1,837,800 million individually packaged, fresh meals and serve them to approximately 30,630 needy residents across the City. The Contractor will work in tandem with the City of New Orleans, Orleans Parish Communication District (311) and ViaLink (211) to receive referrals. Residents who are eligible for meal delivery assistance will be entered into a central database and that data will be transmitted to the Contractor to handle meal preparation, delivery, and distribution.

Term: The contract term is intended to be 30 days with an option to renew in 7-day increments. The City will dismantle this initiative as soon as the public health emergency ends. Prices shall remain firm for the initial term and all subsequent renewals of this contract.

**Criteria**

The City of New Orleans reserves the right to clarify a Contractor’s submittal prior to the award of the solicitation. It is the intent of the City of New Orleans to award the bid to the best overall quality Contractor based on price, responsiveness, experience, flexibility, and innovativeness. The City will select the Contractor with the best proposal as evidenced by their overall evaluation score.

The City of New Orleans would like for Contractors to:

- Increase jobs in the restaurant industry and beyond
- Support local, minority-owned, restaurants
- Incorporate nutritious, locally-sourced foods into menu options

**Scope**

a. Summary:

The City of New Orleans intends to purchase approximately 1,837,800 million individually packaged, fresh meals at a maximum of \$10 per meal to be prepared by local restaurants and/or commercial kitchens and delivered daily to food insecure individuals.

b. Time Frame

The contract will be awarded for an initial 30-day period with the option to renew, without further bid, for 7-day increments. The Contractor will deliver, on a daily basis, to locations seven days per week based upon the sites, quantities and meal routes. These quantities are estimates, and additional meals may be requested should funds become available. The Contractor may be required to supply meals to additional delivery sites during the contract period. In addition, if necessary, existing sites may be relocated, or days of operation changed during the contractual period.

c. Distribution Schedule

The Contractor shall coordinate delivery to individual residents who cannot leave their homes (senior citizens, high-risk and homebound adults) and shall prepare meals for distribution at congregate feeding locations. The Contractor is also responsible for coordination with local restaurants, catering companies and/or commercial kitchens that are supplying meals. The Contractor will provide up to 2 meals per day, seven days a week including holidays. The Contractor will provide lunch and dinner. Dinner must be a hot meal.

The number of participants, nutrition sites, or home delivered meals routes may change throughout the term of this agreement. The numbers provided are estimated for planning purposes only. The daily participation may vary. Funding changes may require drastic increases or decreases in participation levels and the number of meals per site.

d. Restaurant Procurement & Engagement

If the Contractor chooses to procure restaurants to participate, the Contractor should ensure competition and equal opportunity in how restaurants are selected to participate. The Contractor will be responsible for conducting outreach to area restaurants and assess all potential partners' eligibility based upon their capacity to staff and execute the operation. The Contractor will contract with a diverse array of restaurants including a mix of large and small businesses, minority and women-owned restaurants and businesses that reflect geographic representation across all five council districts of New Orleans.

The Contractor will assess, onboard and train all restaurant partners, advise on menu recommendations, create a weekly schedule, communicate any changes to its partners in a timely manner, coordinate on delivery/logistics, ensure health and safety protocols are observed and pay restaurants on a weekly basis.

e. Menu:

- The selected vendor should contract with commercial kitchens or restaurants to prepare wholesome, healthy and nutritious meals;
- Menus should rotate through the week to provide variety for recipients;
- Each meal should be 14-16 ounces in total weight, broken down roughly to: 6 oz protein, 4 oz starch or grain, 4 oz vegetable;
- Lunch can be hot or cold and dinner meals must be hot. Meals should be prepared to be reheated if necessary;
- Meals should comply with the current Dietary Guidelines for Americans (DGA). The Contractor should work with the City of New Orleans and restaurant partners to ensure that food allergens and/or specific food requirements (vegetarian, vegan, halal, kosher, etc.) are satisfied;
- The Contractor will limit the use of tree nuts, peanuts, and shellfish.
- The individual meal cost should not exceed \$10;
- Menu items should be sourced locally when possible; and
- Menu items should incorporate culturally-relevant ingredients and cuisine as much as possible.



f. Meal Preparation

Preparation methods must preserve nutritional value and enhance meal acceptability. Delivery of prepared food shall be provided to assure that existing sanitation and temperature regulations are met. The Contractor must limit the amount of time meals spend in transit before they are consumed. Food transported to sites may not be held on delivery vehicles for any longer than 3 1/2 hours from loading to last delivery.

g. Meal Delivery

The Contractor is responsible for coordination with the City of New Orleans, 211 and 311 to facilitate delivery to individual residents or congregate feeding sites within each Council District. The Contractor will provide all equipment, as needed, at each site to ensure meals will be delivered or prepared for pick up in a timely fashion. This will include refrigeration and equipment necessary to prepare hot meals on-site. The Contractor will follow food handling and distribution protocols for each location. The Contractor should provide a detailed food delivery plan that describes any third-party vendors that will be contracted to support delivery.

The Contractor should ensure the following meal delivery procedures are observed:

- Delivery vehicles must be sanitized before and after each delivery;
- Delivery drivers must wear personal protective equipment;
- Gloves must be worn at all times and changed between deliveries;
- Practice 'no-contact' transfers; and
- If delivering to a distribution site, avoid going inside the building, have receiving contact meet outside and practice no-contact transfers.

h. Food Safety & Sanitation

The Contractor must comply with all federal, state, and local food safety regulations. The food Contractor and its subcontractors must not have had any temporary or permanent closures, administrative complaints regarding food safety, or 10 or more high priority/significant findings on sanitation inspection within the past 12 months. The food Contractor must document food safety management programmed within the facility that meets or exceeds the minimum requirements of federal, state, municipal or other agencies authorized to inspect or accredit the food service operations.

The Contractor should attach food safety protocols and measures taken to protect employees and the community that include use of personal protective equipment, social distancing at work/kitchens and during deliveries, use of gloves, handwashing procedures and cleaning/sanitizing workstations.

i. Experience/Qualifications

In addition to satisfying the requirements detailed within this proposal and the precepts of public requests for proposals, the Contractor must have prior experience in providing services of a similar nature and complexity for a program of comparable size. Likewise, the Contractor must possess the integrity, reliability, and other qualities that will assure quality performance.

Prior to the contract award, the City of New Orleans reserves the right to require any Contractor to submit additional documentation and other evidence attesting to the Contractor's responsiveness. If, in the sole opinion of the City Of New Orleans, a Contractor is deemed to have failed regarding the submission of such substantiating documentation and evidence, and provided City Of New Orleans has otherwise or thereby determined the Contractor to be irresponsible, City Of New Orleans, may reject or otherwise not consider such Contractor's proposal.

## **Performance and Contract Management**

The selected contractor shall be assigned work through Task Orders (TO) issued by the City of New Orleans based on the anticipated services required. The contractor will not be paid for any services provided without an executed TO, or for services provided prior to the issuance of the TO. Furthermore, all services must be provided during the original term of the contract or its properly executed amendment to extend the term for continuity of services, or it will not be paid. The contractor will receive a list of qualified applicants/constituents for this initiative from the City's contract manager. Contractor is expected to provide weekly summary reports to document the served population. All reports must include the eligible constituent's name and address along with the dates meals were provided.

The expectation of the City is that the selected contractor will be capable of mobilizing their onsite team within 48-72 hours of the City's issuance of a Notice to Proceed. The City further expects that the selected contractor's onsite team will consist of the professionals who were recommended in their proposal, and any substitutions will require a discussion and City approval, and proposals of subcontractor replacements with similar professional experience will be necessary. This program will be dismantled as soon as the public health emergency ends, so selected contractor will be expected to demobilize its resources within 24-48 hours.

Timeliness and Responsiveness – The selected contractor shall return the City's phone calls and/or emails communication within twenty-four (24) hours.

The City shall have the right to subject the individual or firm contracted to performance monitoring. Should the City possess a reasonable belief or has determined that the individual or firm has misrepresented themselves and is not competent to perform the tasks outlined within the Needed Services section of this Request for Proposal, this will result in an immediate termination of their contract.

The City shall also have the right to terminate the contract for serious misconduct, habitual neglect of duty or incompetence, conduct incompatible with the contractor's duties or prejudicial to the region's business, or willful disobedience of the City's orders.

## **Pricing/Cost**

### **Vendor's Fee Proposal Requirements**

The City of New Orleans intends to purchase approximately 1,837,800 million individually packaged, fresh meals at a maximum of \$10 per meal for delivery to approximately 30,630 Orleans Parish residents. Please provide your firm's most competitive price for 2 meals per day, inclusive of home and congregate site deliveries. All proposals must demonstrate how the cost per meal price will be accomplished.

**City of New Orleans, Louisiana  
Request for Proposals/Qualifications  
COVID-19 Mass Feeding Initiative  
June 1, 2020**

**Attachment “B”**

**CONTRACT TERMS AND CONDITIONS**

**TABLE OF CONTENTS**

1. **ACKNOWLEDGMENT OF EXCLUSION OF WORKER’S COMPENSATION COVERAGE.**
2. **ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT COMPENSATION COVERAGE.**
3. **ASSIGNABILITY.**
4. **AMENDMENT.**
5. **AUDIT AND INSPECTION.**
6. **CHOICE OF LAWS.**
7. **COMPLIANCE WITH CITY’S HIRING REQUIREMENTS - BAN THE BOX**
8. **CONFLICT OF INTEREST.**
9. **CONSTRUCTION OF AGREEMENT.**
10. **CONVICTED FELON STATEMENT.**
11. **DECLARED DISASTER.**
12. **DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM.**
13. **DURATION.**
14. **EMPLOYEE VERIFICATION.**
15. **ENTIRE AGREEMENT.**
16. **NON-DISCRIMINATION.**
17. **EXCLUSIVE JURISDICTION AND VENUE.**
18. **EXTENSION.**
19. **INCORPORATION INTO SUBCONTRACTS.**
20. **INDEMNIFICATION.**
21. **INDEPENDENT CONTRACTOR STATUS.**
22. **LIMITATIONS OF THE CITY’S OBLIGATIONS.**
23. **INVOICING.**
24. **LIVING WAGES.**

25. NO THIRD PARTY BENEFICIARIES.
26. NON-EXCLUSIVITY.
27. NON-SOLICITATION.
28. NON-WAIVER.
29. OWNERSHIP INTEREST DISCLOSURE.
30. PAYMENT.
31. PERFORMANCE MEASURES.
32. PROHIBITION AGAINST FINANCIAL INTEREST IN AGREEMENT.
33. PROHIBITION ON POLITICAL ACTIVITY.
34. REMEDIES CUMULATIVE.
35. SEVERABILITY.
36. SUBCONTRACTOR REPORTING.
37. SURVIVAL.
38. SUSPENSION.
39. TERMINATION FOR CAUSE.
40. TERMINATION FOR CONVENIENCE.
41. TERMINATION FOR NON-APPROPRIATION.
42. TERMS BINDING.
43. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS.

**1. ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S COMPENSATION COVERAGE.** The Contractor herein expressly agrees and acknowledges that it is an independent contractor as defined in R.S. 23:1021 (6) and as such, it is expressly agreed and understood between the parties hereto, in entering into this Contract, that the City shall not be liable to the Contractor for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana, and further, under the provisions of R.S. 23:1034 anyone employed by the Contractor shall not be considered an employee of the City for the purpose of Worker's Compensation coverage.

**2. ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT COMPENSATION COVERAGE.** The Contractor herein expressly declares and acknowledges that it is an independent contractor, and as such is being hired by the City under this Contract for hire as noted and defined in R.S. 23:1472 (E), and therefore, it is expressly declared and understood between the parties hereto, in entering into this Contract, or agreement for hire, and in connection with unemployment compensation only, that:

- a. The Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this contract; and
- b. Services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and
- c. The Contractor has been independently engaged in performing the services listed herein prior to the date of this Contract.

Consequently, neither the Contractor nor anyone employed by the Contractor shall be considered an employee of the City for the purpose of unemployment compensation coverage, the same being hereby expressly waived and excluded by the parties hereto.

**3. ASSIGNABILITY.** The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same without prior written consent of the City.

**4. AMENDMENT.** The Contract shall not be modified except by written amendment executed by duly authorized representatives of the parties.

**5. AUDIT AND INSPECTION:**

- a. The Contractor will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Contract maintained by or under the control of the Contractor, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available, the Contractor will make the documents available at a time and location that is convenient for the City.
- b. The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the Contract. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

**6. CHOICE OF LAWS.** This Contract shall be construed and enforced in accordance with the laws of the State of Louisiana, without regard to its conflict of law's provisions.

**7. COMPLIANCE WITH CITY'S HIRING REQUIREMENTS - BAN THE BOX.**

**A.** The Contractor agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary.

**B.** Failure to maintain compliance with the City's hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Contractor notice of noncompliance and allow Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement.

**C.** This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and the remaining provisions of the Agreement will remain in full force and effect.

**D.** The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

**8. CONFLICT OF INTEREST.** In the interest of ensuring that efforts of the Contractor do not conflict with the interests of the City, and in recognition of the Contractor's responsibility to the City, the Contractor agrees to decline any offer of employment if its independent work on behalf of the City is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rests with the Contractor. It is incumbent upon the Contractor to notify the City and provide full disclosure of the possible effects of such employment on the Contractor's independent work in behalf of the City. Final decision on any disputed offers of other employment for the Contractor shall rest with the City.

**9. CONSTRUCTION OF AGREEMENT.** Neither party will be deemed to have drafted the Contract. The Contract has been reviewed by all parties and will be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of the Contract will be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of the Contract are provided for convenience only and are not intended to have effect in the construction or interpretation of the Contract. Where appropriate, the singular includes the plural, and neutral words and words of any gender include the neutral and other gender.

**10. CONVICTED FELON STATEMENT.** The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

**11. DECLARED DISASTER.**

**A. Declaration.** During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City on an as-needed and task-order-driven basis. Because of the uncertainty of the scale and/or type of emergency, the services to



be provided by the Contractor will vary and may need to be adjusted as needs are identified. The Contractor may be requested to provide a range of services. Said services may need to be rendered on a continual basis (24 hours / 7 days per week) during the declaration of an emergency.

**B. Task Order. Notification and Personnel.** Prior or during the declaration of an emergency, the City will notify the Contractor via task order if the City requires the Contractor's support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City's needs.

**C. Purchase Order.** Once services are identified, the City will issue a purchase order to the Contractor. The City will issue a subsequent purchase order in case of additional needs for services, or may issue a modified purchase order if changes are made to the initial purchase order.

**D.** The Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

## **12 DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM.**

**A. In General.** The Contractor agrees to abide by the City Code sections 70-496, *et seq.*, to use its best efforts to carry out all applicable requirements of the City's DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City's Office of Supplier Diversity ("**OSD**") oversees the DBE Program and assigns a DBE Compliance Officer ("**DBECO**") to ensure compliance.

**B. Monitoring.** To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Contractor's use of DBE subcontractors/suppliers ("**DBE Entities**") through the following actions:

6. Job site visits;
7. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;
8. Routine audits of contract payments to all subcontractors;
9. Reviewing of records and reports; and/or
10. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Contractor or DBE Entities.

**C. Cooperation.** The Contractor shall:

6. Designate an individual as the "DBE Liaison" who will monitor the Contractor's DBE participation as well as document and maintain records of "Good Faith Efforts" with DBE Entities.
7. Execute written contracts with DBE Entities that meet the applicable DBE goals.
  - a. The Contractor shall provide the DBECO with copies of said contracts within thirty (30) days from the date this Agreement is fully executed between the City and the Contractor.

- b. The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.
- 8. Establish and maintain the following records for review upon request by the OSD:
  - c. Copies of written contracts with DBE Entities and purchase orders;
  - d. Documentation of payments and other transactions with DBE Entities;
  - e. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of "Post-Award Good Faith Efforts" for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;
  - f. Any other records required by the OSD.

The Contractor is required to maintain such records for three (3) years after completion or closeout of this Agreement. Such records are necessary to determine compliance with their DBE obligations.

- 9. Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by the OSD.
  - e. The Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth (15<sup>th</sup>) day of each month until all DBE subcontracting work is completed.
  - f. Reports are required even when no activity has occurred in a monthly period.
  - g. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
  - h. The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.
- 10. Conform to the established percentage as approved by the OSD.
  - d. The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
  - e. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
  - f. The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

**D. Post-Award Modification.** The OSD may grant a post-award modification request if:

- c. For a reason beyond the Contractor's control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the

intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Contractor shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the performance of the Agreement; or

- d. The Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Contractor shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

**13. DURATION.** The services to be provided under the terms of this Contract shall begin upon execution of Contract and shall end no later than twelve (12) months after. It is understood and acknowledged by all signers to this Contract that work described under these terms is to be accomplished during the time period specified herein.

**14. EMPLOYEE VERIFICATION.** The Contractor swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Contractor being ineligible for any public contract for a period of three years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

**15. ENTIRE AGREEMENT.** This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

**16. NON-DISCRIMINATION**

**A. Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or

ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry.

**B. Non-Discrimination.** In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

**C.** The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

**17. EXCLUSIVE JURISDICTION AND VENUE.** For all claims arising out of or related to this Contract, the Contractor hereby consents and yields to the jurisdiction of the Civil District Court for the Parish of Orleans, and expressly waives any (A) pleas of jurisdiction based upon Contractor's residence and (B) right of removal to federal court based upon diversity of citizenship.

**18. EXTENSION.** This Contract may be extended at the option of the City, provided that funds are allocated by the Council of the City and the extension of the Contract facilitates the continuity of services provided herein. This Contract may be extended by the City for four (4) additional one-year terms.

**19. INCORPORATION INTO SUBCONTRACTS.** The Contractor will incorporate these Contract Terms and Conditions into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

**20. INDEMNIFICATION.**

**A.** To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "Indemnified Parties") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Contractor, its agents or employees while engaged in or in connection with the discharge or performance of any services under this Contract; and for any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Contract.

**B. Limitation.** The Contractor's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the

Contractor nor any of its agents or employees contributed to such gross negligence or willful misconduct.

**C. Independent Duty.** The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (1) the allegations are or may be groundless, false, or fraudulent; or (2) the Contractor is ultimately absolved from liability.

**D. Expenses.** Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

**21. INDEPENDENT CONTRACTOR STATUS.** The Contractor is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

**22. LIMITATIONS OF THE CITY'S OBLIGATIONS.** The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

**23. INVOICING.** The Contractor must submit invoices monthly (unless agreed otherwise between the parties to this Agreement) to the City electronically, via its supplier portal, for goods or services provided under this Agreement no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information: contract or purchase order number issued by the City, and the name of the city department to be invoiced. The City may require changes to the form or the content of the invoice. The City may also require additional supporting documentation to be submitted with invoices.

**24. LIVING WAGES.** To the fullest extent permitted by law, the Contractor agrees to abide by City Code sections 70-801, *et seq.*, which requires payment of a wage to covered employees equal to the amounts defined in the Code ("**Living Wage**"). If the Contractor fails to comply with the requirements of the Living Wage during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City.

**25. NO THIRD PARTY BENEFICIARIES.** The Contract is entered into for the exclusive benefit of the City and the Contractor, and the City and the Contractor expressly disclaim any intent to benefit anyone not a party to this Contract.

**26. NON-EXCLUSIVITY.** This Contract is non-exclusive and the Contractor may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Contract and the City may engage the services of others for the provision of some or all of the work to be performed under this Contract.

**27. NON-SOLICITATION.** The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the subject Contract. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for him, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the subject Contract.

**28. NON-WAIVER.** The failure of the City to insist upon strict compliance with any provision of the Contract, to enforce any right or to seek any remedy upon discovery of any default or breach of the Contractor at such time as the initial discovery of the existence of such



noncompliance, right, default or breach shall not affect or constitute a waiver of the City's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

**29. OWNERSHIP INTEREST DISCLOSURE.** The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes of this provision, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the City may, after thirty (30) days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

**30. PAYMENT.** Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that goods and/or services described under this Agreement have been delivered, installed (if required), rendered, and/or accepted and upon receipt by the City of properly submitted invoice via the City's supplier portal.

**31. PERFORMANCE MEASURES.**

**A. Factors.** The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; staff turnover; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

**B. Failure to Perform.** If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

**32. PROHIBITION AGAINST FINANCIAL INTEREST IN AGREEMENT.** No elected official or employee of the City shall have a financial interest, direct or indirect, in the Contract, including through any financial interest held by the spouse, child, or parent. Any willful violation of this provision, with the expressed or implied knowledge of the Contractor, will render this Contract voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the Contractor pursuant to this Contract without regard to the Contractor's satisfactory performance.

**33. PROHIBITION ON POLITICAL ACTIVITY.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Contract shall be used in the performance of this Contract for any partisan political activity, or to further the election or defeat of any candidate for public office.

**34. REMEDIES CUMULATIVE.** No remedy set forth in the Contract or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may

be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

**35. SEVERABILITY.** If a court of competent jurisdiction finds any provision of the Contract to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or, if reformation is not possible, the unenforceable provision will be fully severable and the remaining provisions of the Contract will remain in full force and effect and will be construed and enforced as if the unenforceable provision was never a part the Contract.

**36. SUBCONTRACTOR REPORTING.** The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Contract's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. For any subcontractor proposed to be retained by the Contractor to perform work on the Contract with the City, the Contractor must provide notice to the City within thirty (30) days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty (30) days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

**37. SURVIVAL.** All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, venue, choice of law, and warranties shall survive the expiration, suspension, or termination of the Contract and continue in full force and effect.

**38. SUSPENSION.** The City may suspend this Contract at any time and for any reason by giving two (2) business day's written notice to the Contractor. The Contractor will resume work upon five (5) business day's written notice from the City.

**39. TERMINATION FOR CAUSE.** The City may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective thirty (30) days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

**40. TERMINATION FOR CONVENIENCE.** The City may terminate this Contract at any time during the term of the Contract by giving the Contractor written notice of the City's intention to terminate at least thirty (30) days before the date of termination.

**41. TERMINATION FOR NON-APPROPRIATION.** This Contract will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Contract without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Contract.

**42. TERMS BINDING.** The terms and conditions of the Contract are binding on any heirs, successors, transferees, and assigns.



**43. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS.** It is expressly agreed and understood between the parties entering into this Contract that the Contractor, acting as an independent agent, shall not receive any sick and annual leave benefits from the City of New Orleans.

**[END OF ATTACHMENT "B"]**

**City of New Orleans, Louisiana  
Request for Proposals  
COVID-19 Mass Feeding Initiative  
June 1, 2020**

**Attachment “C”**

**DISADVANTAGED BUSINESS ENTERPRISE DBE) REQUIREMENTS**

(Must be submitted with proposal)



OFFICE OF SUPPLIER DIVERSITY  
CITY OF NEW ORLEANS

DBE Responsiveness Form-3  
DBE Participation Plan

Contact Office of Supplier Diversity for  
questions on completing this form.  
Via email: [supplierdiversity@nola.gov](mailto:supplierdiversity@nola.gov)  
OR  
1340 Poydras Street, 18<sup>th</sup> Floor  
New Orleans, LA 70112

**RESPONDENTS:** *This completed form must be furnished to the Bureau of Purchasing with your proposal. You must complete every section of the form or your proposal will be deemed non-responsive. If a section is not applicable to your proposal, you must explain why it is not applicable or your proposal will be deemed non-responsive. You must submit your response on the DBE Responsiveness Form 3 or your proposal will be deemed non-responsive. You may use additional pages as warranted.*

RFP/RFQ/Solicitation #: \_\_\_\_\_

Date:     /     / \_\_\_\_\_

Description: \_\_\_\_\_

Name of Respondent: \_\_\_\_\_

Please check the appropriate space:

- ☐ The proposer is committed to the contract goal of \_\_\_\_\_% DBE utilization. (If selected, you must complete and submit DBE Compliance Form 1 in order to be awarded a contract.)
- ☐ The proposer is unable to meet the DBE contract goal, however is committed to a minimum of \_\_\_\_\_% DBE utilization and will submit documentation demonstrating good faith efforts. (If selected, you must complete and submit DBE Compliance Form 1 and/or DBE Compliance Form-2 along with all required supporting documentation in order to be awarded a contract.)

**SECTION I - DBE COMMITTEMENT TO CONTRACT GOAL:** You must list all DBE firms that you have identified to participate on the contract. **PLEASE NOTE:** Every DBE firm listed must be utilized on the project. To remove and/or replace a DBE firm you must submit a DBE Removal/Substitution Request Form 4 and receive approval from the Office of Supplier Diversity to remove and/or replace the firm.

DBE FIRM & NAME of DBE	PHONE	SOURCE OF CERTIFICATION (SLDBE or LAUCP)	SCOPE OF WORK TO BE PERFORMED BY THE DBE	ESTIMATED VALUE of PROPOSED DBE CONTRACT (If Known)	ESTIMATED % OF TOTAL CONTRACT
1.				\$	%
2.				\$	%
3.				\$	%
4.				\$	%
5.				\$	%
6.				\$	%
7.				\$	%
8.				\$	%
9.				\$	%
10.				\$	%
<b>TOTALS</b>				\$	%



OFFICE OF SUPPLIER DIVERSITY  
**CITY OF NEW ORLEANS**

DBE Responsiveness Form-3  
**DBE Participation Plan**

Contact Office of Supplier Diversity for  
questions on completing this form.  
Via email: [supplierdiversity@nola.gov](mailto:supplierdiversity@nola.gov)  
OR  
1340 Poydras Street, 18<sup>th</sup> Floor  
New Orleans, LA 70112

**SECTION II - DBE CONFIRMATION:** For the DBE firms listed above, please provide the name and signature of the firm's authorized representative.

NAME OF DBE FIRM	PRINT NAME OF DBE FIRM'S AUTHORIZED REPRESENTATIVE	SIGNATURE OF DBE FIRM'S AUTHORIZED REPRESENTATIVE	DATE

**SECTION III - SPECIFIC PORTIONS OF WORK IDENTIFIED FOR DBE SUBCONTRACTOR:** You must list all selected scopes or portions of work that you identified to be performed by DBE(s) and the estimated percentage value of each scope of work identified in order to increase the likelihood of meeting the contract goal for this project.

SCOPE OR PORTIONS OF WORK IDENTIFIED FOR DBE PARTICIPATION		ESTIMATED % OF CONTRACT VALUE
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
<b>TOTAL</b>		



OFFICE OF SUPPLIER DIVERSITY  
**CITY OF NEW ORLEANS**

DBE Responsiveness Form-3  
**DBE Participation Plan**

Contact Office of Supplier Diversity for  
questions on completing this form.

Via email: [supplierdiversity@nola.gov](mailto:supplierdiversity@nola.gov)

OR

1340 Poydras Street, 18<sup>th</sup> Floor  
New Orleans, LA 70112

**SECTION IV - PAST PERFORMANCE:** You must provide details of your firm's past performance in compliance with DBE goals.

AGENCY NAME	PROJECT NAME	COMPLETION DATE	DBE PARTICIPATION ACHIEVED	OSD VERIFICATION

**SECTION V - OTHER:** Please provide narrative details of any other efforts your firm will conduct to attain the DBE goal.

**City of New Orleans, Louisiana  
Request for Proposals  
COVID-19 Mass Feeding Initiative  
June 1, 2020**

**Attachment “D”**

**TAX CLEARANCE AUTHORIZATION**

# CITY OF NEW ORLEANS

## TAX CLEARANCE AUTHORIZATION

According to Section 2-8 of the Code of the City of New Orleans, the City cannot enter into or make payments under a contract, grant or cooperative endeavor agreement with any person, corporation, or entity delinquent in City taxes. This form supplies the needed tax clearance. This clearance is issued without prejudice to any tax liabilities discovered by audit.

**Please refer to the instructions on the back of this form**

BUSINESS NAME:

OWNER'S NAME:

REAL ESTATE TAX NUMBER:

TYPE OF BUSINESS:

BUSINESS ADDRESS:

PERSONAL PROPERTY TAX NUMBER:

MAILING ADDRESS:

CONTACT TELEPHONE:

SALES TAX/OCCUPATIONAL LICENSE  
NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

PRINT NAME:

TITLE:

AUTHORIZED SIGNATURE:

DATE SIGNED:

I certify that I have the authority to execute this form with respect to the tax matters covered and that the above is true and correct. The City of New Orleans is authorized to inspect and/or receive confidential tax information.

### BUREAU OF REVENUE (Room 1W15)

This clearance covers Occupational License and Sales/Use taxes.

I hereby assert that after review of the taxpayer's records of this date that the taxpayer **IS NOT** delinquent in any taxes owed to the city. This clearance covers the period today through March 1, 20 . The above clearance may be revoked for failure to pay sales tax.

### BUREAU OF TREASURY (Room 1W37)

This clearance covers Ad Valorem taxes for Real Estate and Business Property taxes.

I hereby assert that after review of the taxpayer's records of this date that the taxpayer **IS NOT** delinquent in any taxes owed to the city. This clearance covers the period today through March 1, 20 .

COLLECTOR OF REVENUE – PRINT NAME

DATE

TREASURY CHIEF – PRINT NAME

DATE

I attest that the taxpayer named above **is not** delinquent in any taxes owed to the city.

DIRECTOR OF FINANCE – PRINT NAME

DATE



# **CITY OF NEW ORLEANS**

## **TAX CLEARANCE AUTHORIZATION**

---

### **INSTRUCTIONS**

This form authorizes the City of New Orleans to inspect and/or receive your confidential tax information. This Tax Clearance Authorization will not be honored for any purpose other than contracting with the City of New Orleans.

It is recommended that all outstanding tax and business registration be completed prior to processing the form to expedite contract execution.

1. Complete this form by providing all of the information requested. Failure to fill in ALL information requested will delay processing.
2. Sign and date the authorization form and submit to the Department with whom you are contracting. If the form is not signed and dated, the form will not be processed.
3. The following requirements must be met in order for a Tax Clearance Authorization form to be approved by the City of New Orleans.

#### **Real Estate/Personal Property Tax**

- Businesses are required to be current in payment of all Real Estate Tax and Personal Property Tax.
- A business can visit the City of New Orleans' website, [www.nola.gov](http://www.nola.gov) at the Bureau of Treasury webpage to pay outstanding Real Estate and Personal Property taxes due.
- A business can mail outstanding tax payments to City of New Orleans, Bureau of the Treasury 1300 Perdido St., Room 1W38, New Orleans, La. 70112.

#### **Sales Tax/Occupational License**

- Businesses located within Orleans Parish are required to obtain an annual Occupational License. A City of New Orleans Sales Tax number will also be issued at the same time.
- If the business is domiciled outside of Orleans Parish, a registration is required to be completed to obtain a Certificate of Registration and a City of New Orleans Sales Tax number.
- If a business is not registered, a New Business Application must be completed.
- Non-profit organizations must comply with the Occupational License requirements by completing a New Business Application.
- Once exempt status is confirmed for the non-profit organization, the organization is exempt from Occupational License fees. Please be prepared to provide 501© documentation and/or Louisiana Secretary of State Status.
- All applications can be found on the City of New Orleans' website, [www.nola.gov](http://www.nola.gov), at the OneStop Shop webpage.
- Any questions may be forwarded to the OneStop Shop at (504)658-7100.

**Attachment "E"**  
**CITY OF NEW ORLEANS**  
**IDENTIFICATION OF SUBCONTRACTORS**

**STATE OF LOUISIANA**

**PARISH OF \_\_\_\_\_**

Before me, the undersigned authority, came and appeared \_\_\_\_\_, who, being first duly sworn, deposed and said that:

1. He/She is the \_\_\_\_\_ and authorized representative of \_\_\_\_\_, hereafter called "Respondent."
2. The Respondent submits the attached proposal in response to City of New Orleans Proposal # \_\_\_\_\_.
3. The Respondent hereby identifies the following persons, natural or artificial, who are retained by Respondent at the time the attached proposal is submitted and who are expected to perform work as subcontractors in connection with the Respondent's work for the City. Respondent hereby acknowledges and agrees that when new subcontractors not previously named are added to the project; they must be promptly identified to the City User Department within 48 hours of the change. The official change may not take place unless and until the City provides its written approval.

\_\_\_\_\_  
Person(s) and Company Name (if applicable)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Respondent Representative (Signature)

\_\_\_\_\_  
(Print or type name)

\_\_\_\_\_  
(Address)

Sworn to and subscribed before me, \_\_\_\_\_, Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public (Signature)  
Notary ID#/Bar Roll #

Attachment "F"

**CONFLICT OF INTEREST DISCLOSURE AFFIDAVIT**

STATE OF LOUISIANA

PARISH OF \_\_\_\_\_

Before me, the undersigned authority, came and appeared \_\_\_\_\_, who, being first duly sworn, deposed and said that:

4. He/ She is the \_\_\_\_\_ and authorized representative of \_\_\_\_\_, hereafter called "Respondent."

5. The Respondent submits the attached proposal in response to City of New Orleans Proposal # \_\_\_\_\_.

6. The Respondent hereby confirms that a conflict(s) of interest exists/does not exist/may exist in connection with this solicitation which might impair Respondent's ability to perform if awarded the contract, including any familial or business relationships that the Respondent, the proposed subcontractors, and their principals have with city officials or employees. *(If a conflict(s) of interest exists and/or may exist, describe in a letter the nature of the conflict, the parties involved and why there is a conflict. Attach said letter to this form).*

\_\_\_\_\_  
Respondent Representative (Signature)

\_\_\_\_\_  
(Print or type name)

\_\_\_\_\_  
(Address)

Sworn to and subscribed before me, \_\_\_\_\_, Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public (Signature)

Notary ID#/Bar Roll #

Attachment "G"

AFFIDAVIT OF COMPLIANCE WITH HIRING REQUIREMENTS

STATE OF LOUISIANA

PARISH OF \_\_\_\_\_

Before me, the undersigned authority, came and appeared \_\_\_\_\_, who, after being duly sworn, deposed and said that:

1. He/ She is the \_\_\_\_\_ (*title*) and authorized representative of \_\_\_\_\_ (*entity*), the "Respondent."

2. The Respondent submits the attached proposal in response to City of New Orleans Proposal # \_\_\_\_\_.

3. The Respondent hereby confirms that \_\_\_\_\_ (*entity*) is

☐ compliant with the City of New Orleans' hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f), unless otherwise excluded by city, state, or federal laws or regulations.

☐ unable to comply with the City of New Orleans' hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f) for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_  
Respondent Representative (Signature)

\_\_\_\_\_  
(Print or type name) (Address)

Sworn to and subscribed before me, \_\_\_\_\_, Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public (Signature)

\_\_\_\_\_  
Notary Public (print)

Notary ID#/Bar Roll # \_\_\_\_\_

**City of New Orleans, Louisiana  
Request for Proposals/Qualifications  
COVID-19 Mass Feeding Initiative  
June 1, 2020**

**ATTACHMENT “H”  
SAMPLE  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF NEW ORLEANS  
AND  
NAME OF CONTRACTOR  
RFQ/RFP NUMBER  
TITLE OF RFQ/RFP**

**THIS PROFESSIONAL SERVICES AGREEMENT** (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and **NAME OF CONTRACTOR**, represented by **NAME AND TITLE OF INDIVIDUAL INDICATED IN PROOF OF SIGNING AUTHORITY** (the “**Contractor**”). The City and the Contractor may sometimes be collectively referred to as the “**Parties.**” The Agreement is effective as of the date of execution by the City (the “**Effective Date**”).

**RECITALS**

*[Choose following “whereas” clauses if the City is hiring the selected the vendor as a result of an RFQ and a subsequent RFP]*

**WHEREAS**, on **DATE OF RFQ**, the City issued a request for proposals **RFQ NUMBER** seeking qualified persons to provide professional services including **SHORT DESCRIPTION OF SERVICES** (the “**RFQ**”);

**WHEREAS**, the Contractor submitted a proposal dated **DATE OF PROPOSAL**, and the City has selected the Contractor to perform the professional services described in the RFQ.

**WHEREAS**, on **DATE OF RFP**, the City issued a request for proposals **RFP NUMBER** to qualified contractors under the RFQ to provide professional services including **SHORT DESCRIPTION OF SERVICES** (the “**RFP**”); and

**WHEREAS**, the Contractor submitted a proposal dated **DATE OF PROPOSAL**, and the City has selected the Contractor to perform the professional services described in the RFP.

*[Choose following “whereas” clauses if the City is hiring the selected vendor as a result of an RFP]*

**WHEREAS**, on **DATE OF RFP**, the City issued a request for proposals **RFP NUMBER** seeking qualified persons to provide professional services including **SHORT DESCRIPTION OF SERVICES** (the “**RFP**”); and

WHEREAS, the Contractor submitted a proposal dated **DATE OF PROPOSAL**, and the City has selected the Contractor to perform the professional services described in the RFP.

NOW THEREFORE, the City and the Contractor agree as follows:

**ARTICLE I - THE CONTRACTOR'S OBLIGATIONS**

A. **Services.** The Contractor will, in accordance with the schedule approved by the City:

1. **INSERT SCOPE OF SERVICES, TASKS, DELIVERABLES, ELSE IN ACCORDANCE WITH EITHER THE RFQ/RFP OR CONTRACTOR'S PROPOSAL;**

2. Perform all other services and obligations as set forth in any the following documents that are incorporated fully into this Agreement: the RFQ AND/OR RFP; the Contractor's proposal dated **DATE OF PROPOSAL**.

3. Submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of the Contractor as set forth in this Agreement;

4. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the City, at no additional compensation;

5. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;

6. Perform all requirements set forth in La. R.S. 38:2192, including without limitation the payment of any associated costs, and submit a copy of any recorded documents to the City within 30 days after the approval of the associated plan change or amendment; and

7. Cooperate with the City and any person performing work for the City.

The City's officers and employees are not authorized to request or instruct the Contractor to perform any work beyond the scope or duration of this Agreement in the absence of an executed amendment to this Agreement.

B. **Standards.** The Contractor, and any person performing work on its behalf, will perform all work under this Agreement in accordance with **IDENTIFY ANY PROFESSIONAL OR OTHER STANDARDS YOU ARE AWARE OF AND THAT ARE SPECIFICALLY APPLICABLE TO THESE SERVICES.**

C. **Compliance with Laws.** The Contractor, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws and ordinances, including, without limitation, **IDENTIFY ANY LEGAL REQUIREMENTS THAT YOU ARE AWARE OF AND THAT ARE SPECIFICALLY APPLICABLE TO THESE SERVICES.**

D. **Schedule.**

1. The Contractor will perform all work under this Agreement according to the following schedule:

**INSERT APPLICABLE SCHEDULE**

The Contractor will submit a proposed progress schedule to the City within 14 calendar days of receiving written authorization to proceed from the City. At a minimum, the proposed progress schedule must include the following information and be arranged so the actual progress can be shown as work is completed: **INSERT ANY APPLICABLE SCHEDULE REQUIREMENTS.**

2. The City has the sole right to approve, reject, or require changes to all schedules relating to the performance of this Agreement, including, without limitation, any proposed progress schedule and any requests for modifications.

3. The Contractor acknowledges and agrees that time is of the essence in the performance of this Agreement.

**E. Invoices.**

1. The Contractor will submit **INSERT CHOICE BETWEEN MONTHLY – QUARTERLY – OR OTHER** invoices for work performed under this Agreement to the City no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information and supporting documentation: **LIST INFORMATION AND DOCUMENTS REQUIRED TO BE SUBMITTED WITH INVOICE.**

2. All invoices must be signed by an authorized representative of the Contractor under penalty of perjury attesting to the validity and accuracy of the invoice.

3. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

**F. Records and Reporting.**

1. The Contractor will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of XXX years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any dispute relating to the Agreement. If this Agreement is terminated for any reason, the Contractor will deliver to the City all plans and records of work compiled through the date of termination.

2. The Contractor will identify any reporting requirements, including the frequency, method and contents.

3. The Contractor is solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the City.

**G. Audit and Inspection.**

1. The Contractor will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Agreement maintained by or under the control of the Contractor, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available, the Contractor will make the documents available at a time and location that is convenient for the City.

2. The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested [*If this agreement is with a law firm or lawyer, add the following: “, subject to attorney-client privilege.”*]. Failure to comply with such requests shall constitute a material breach of the contract. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.



## **H. Insurance.**

1. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Contractor will maintain the following insurance in full force and effect for the duration of the work under this Agreement:

### **INSERT ANY APPLICABLE INSURANCE REQUIREMENTS APPROVED BY THE CITY'S RISK MANAGER**

**a. Minimum Requirements:**

- i.** Commercial General Liability ("CGL");
- ii.** Worker's Compensation;
- iii.** Professional Liability (Errors and Omissions);

**b. Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

- i.** Additional Insured Status.
- ii.** Primary Coverage.
- iii.** Claims Made Policies.
- iv.** Waiver of Subrogation.
- v.** Notice of Cancellation.
- vi.** Acceptability of Insurers.

2. The Contractor will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Ref.: RFP or RFQ No. xxxxxx) within 10 calendar days of the Effective Date and at any other time at the City's request the following documents:

- a. Proof of coverage for each policy of insurance required by this Agreement;
  - b. Copy of the fully executed Agreement;
  - c. Copies of all policies of insurance, including all policies, forms, and endorsements; and
  - d. Statements disclosing any policy aggregate limit.
3. Without notice from the City, the Contractor will:
- a. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
  - b. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and
  - c. Notify the City's Risk Manager in writing within 48 hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

## **I. Indemnity.**

1. To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the “**Indemnified Parties**”) from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Contractor, its agents, subcontractors, or employees while engaged in or in connection with the discharge or performance of any work under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Agreement.

2. Limitation. The Contractor’s indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Contractor nor any of its agents, subcontractors, or employees contributed to such gross negligence or willful misconduct.

3. Independent Duty. The Contractor has an immediate and independent obligation to, at the City’s option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (a) the allegations are or may be groundless, false, or fraudulent; or (b) the Contractor is ultimately absolved from liability.

4. Expenses. Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City’s reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

## **ARTICLE II - REPRESENTATIONS AND WARRANTIES**

**A.** The Contractor represents and warrants to the City that:

1. The Contractor, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;

2. The Contractor has the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;

3. The Contractor is bonded, if required by law, and fully and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omissions of the Contractor, its employees, or its subcontractors in the performance of this Agreement;

4. The Contractor is not under any obligation to any other person that is inconsistent or in conflict with this Agreement or that could prevent, limit, or impair the Contractor’s performance of this Agreement;

5. The Contractor has no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the City and incorporated into this Agreement;

6. The Contractor is not in breach of any federal, state, or local statute or regulation applicable to the Contractor or its operations;

7. Any rate of compensation established for the performance of services under this Agreement are no higher than those charged to the Contractor’s most favored customer for the same or substantially similar services;

8. The Contractor has read and fully understands this Agreement and is executing this Agreement willingly and voluntarily; and

9. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of this Agreement by the Contractor and the execution of this Agreement by the Contractor's representative constitutes a sworn statement, under penalty of perjury, by the Contractor as to the truth of the foregoing representations and warranties.

**B. Convicted Felon Statement.** The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

**C. Non-Solicitation Statement.** The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

*[If this agreement is with a law firm or lawyer, add the following:]*

**D. Conflict Of Interest.** The Contractor expressly acknowledges that this Agreement is for the performance of professional legal services on behalf of the Client, the City. Therefore, Contractor further acknowledges that it is bound by the Louisiana Rules of Professional Conduct. Contractor represents that it has performed a conflicts check and affirms that no actual, perceived or potential conflicts exist. Contractor acknowledges that it has an ongoing obligation to identify potential conflicts and to decline representation which presents a conflict. Any request for a conflict waiver must be presented to the City Attorney in writing in accordance with the Louisiana Rules of Professional Conduct. Nevertheless, the City Attorney is under no obligation to approve conflict waiver requests.

**E. Employee Verification.** The Contractor swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

*[If scope of work involves public works/construction, substituting the prior language by the following:]*

**Employee Verification.** The Contractor swears that (i) it is in compliance with La. R.S. 38:2212.10, and is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit

verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of La. R.S. 38:2212.10. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

F. The Contractor acknowledges that the City is relying on these representations and warranties and Contractor's expertise, skill, and knowledge and that the Contractor's obligations and liabilities will not be diminished by reason of any approval by the City.

### **ARTICLE III - THE CITY'S OBLIGATIONS**

**A. Administration.** The City will:

**1** Administer this Agreement through the **NAME OF THE CITY DEPARTMENT RESPONSIBLE FOR MONITORING THIS AGREEMENT;**

**2** Provide the Contractor **IDENTIFY ANY SPECIFIC DOCUMENTS TO BE PROVIDED** and other documents deemed necessary for the Contractor's performance of any work required under this Agreement;

**3** Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Contractor; and

**4 INSERT ANY ADDITIONAL OBLIGATIONS FOR THE CITY.**

**B. Payment.** The City will make payments to the Contractor at the rate of compensation established in this Agreement based upon the Contractor's certified invoices, except:

**1** The City's obligation to pay is contingent upon the Contractor's: (a) submission of a complete and accurate invoice; (b) satisfactory performance of the services and conditions required by this Agreement;

**2** The City, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute;

**3** The City may set off any amounts due to the Contractor against any amounts deemed by the City to be owed to the City by the Contractor pursuant this Agreement; and

**4** All compensation owed to the Contractor under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.

**5** The City is not obligated under any circumstances to pay for any work performed or costs incurred by the Contractor that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise from or relate to the any change order within the scope of the Agreement; are for services performed on days on which services were suspended, due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or the City is not expressly obligated to pay under this Agreement.

6 If this Agreement is terminated for any reason, the City will pay the Contractor only for the work requested by the City and satisfactorily performed by the Contractor through the date of termination, except as otherwise provided in this Agreement.

#### **ARTICLE IV - COMPENSATION**

##### **A. Rate of Compensation.**

1 The City will pay the Contractor in accordance with the following rate: **INSERT RATE OF COMPENSATION.**

2 This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the City in accordance with the terms and conditions of this Agreement.

3 The stated compensation is inclusive, and includes no additional amounts for, the Contractor's costs, including without limitation all expenses relating to overhead, administration, subcontractors, employees, bid preparation, bonds, scheduling, invoicing, insurance, record retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement. The City will not consider or be obligated to pay or reimburse the Contractor any other charges or fees and the Contractor will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement.

4 The Contractor immediately will notify the City in writing of any reduction to the rate of compensation for its most favored customer and the rate of compensation established by this Agreement automatically will adjust to the reduced rate effective as of the effective date of the reduction for the most favored customer.

**B. Maximum Amount.** The maximum aggregate amount payable by the City under this Agreement is **\$INSERT NUMERICAL MAXIMUM DOLLAR AMOUNT.**

#### **ARTICLE V - DURATION AND TERMINATION**

**A. Initial Term.** The term of this agreement shall be for 1 year, beginning the Effective Date, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

**B. Extension.** This Agreement may be extended at the option of the City, provided that funds are allocated by the City Council and the extension of the Agreement facilitates the continuity of services provided herein. This Agreement may be extended by the City for 4 additional one-year terms.

**C. Termination for Convenience.** The City may terminate this Agreement at any time during the term of the Agreement by giving the Contractor written notice of the termination at least 30 calendar days before the intended date of termination.

**D. Termination for Non-Appropriation.** This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

**E. Termination for Cause.** The City may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code §2-1120 or requests of the

Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

**F. Suspension.** The City may suspend this Agreement at any time and for any reason by giving 2 business day's written notice to the Contractor. The Contractor will resume work upon 5 business day's written notice from the City.

## **ARTICLE VI – DECLARED DISASTER**

**A. Declaration.** During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City on an as-needed and task-order-driven basis. Because of the uncertainty of the scale and/or type of emergency, the services to be provided by the Contractor will vary and may need to be adjusted as needs are identified. The Contractor may be requested to provide a range of services. Said services may need to be rendered on a continual basis (24 hours / 7 days per week) during the declaration of an emergency.

**B. Task Order, Notification and Personnel.** Prior or during the declaration of an emergency, the City will notify the Contractor via task order if the City requires the Contractor's support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City's needs.

**C. Purchase Order.** Once services are identified, the City will issue a purchase order to the Contractor. The City will issue a subsequent purchase order in case of additional needs for services, or may issue a modified purchase order if changes are made to the initial purchase order.

**D.** The Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

## **ARTICLE VII - PERFORMANCE MEASURES**

**A. Factors.** The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

**B. Failure to Perform.** If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

## **ARTICLE VIII – LIVING WAGES**

To the fullest extent permitted by law, the Contractor agrees to abide by City Code sections 70- 801, *et seq.*, which requires payment of a wage to covered employees equal to the amounts defined in the Code (“**Living Wage**”). If the Contractor fails to comply with the requirements of the Living Wage during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City.



## **ARTICLE IX - DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM**

**A. In General.** The Contractor agrees to abide by the City Code sections 70-496, *et seq.*, to use its best efforts to carry out all applicable requirements of the City’s DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City’s Office of Supplier Diversity (“**OSD**”) oversees the DBE Program and assigns a DBE Compliance Officer (“**DBECO**”) to ensure compliance.

**B. Monitoring.** To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Contractor’s use of DBE subcontractors/suppliers (“**DBE Entities**”) through the following actions:

- 11.** Job site visits;
- 12.** Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;
- 13.** Routine audits of contract payments to all subcontractors;
- 14.** Reviewing of records and reports; and/or
- 15.** Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Contractor or DBE Entities.

**C. Cooperation.** The Contractor shall:

- 11.** Designate an individual as the “DBE Liaison” who will monitor the Contractor’s DBE participation as well as document and maintain records of “Good Faith Efforts” with DBE Entities.
- 12.** Execute written contracts with DBE Entities that meet the applicable DBE goals.
  - e.** The Contractor shall provide the DBECO with copies of said contracts within 30 days from the date this Agreement is fully executed between the City and the Contractor.
  - f.** The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.
- 13.** Establish and maintain the following records for review upon request by the OSD:
  - i.** Copies of written contracts with DBE Entities and purchase orders;
  - j.** Documentation of payments and other transactions with DBE Entities;
  - k.** Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of “Post-Award Good Faith Efforts” for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;
  - l.** Any other records required by the OSD.

The Contractor is required to maintain such records for 3 years after completion or closeout of this Agreement. Such records are necessary to determine compliance with their DBE obligations.

- 14.** Post monthly payments and submit regular reports to the DBECO as required via the online “Contract Compliance Monitoring System” or other means approved by the OSD.



- i The Contractor shall submit the initial report outlining DBE participation within 30 days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth day of each month until all DBE subcontracting work is completed.
- j Reports are required even when no activity has occurred in a monthly period.
- k If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
- l The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.

**15. Conform to the established percentage as approved by the OSD.**

- g The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
- h No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
- i The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

**D. Post-Award Modification.** The OSD may grant a post-award modification request if:

- e For a reason beyond the Contractor's control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Contractor shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the performance of the Agreement; or
- f The Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Contractor shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

## **ARTICLE X - NON-DISCRIMINATION**

**A. Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other

forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

**B. Non-Discrimination.** In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex (gender), sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

**C. Incorporation into Subcontracts.** The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

**D.** The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

#### **ARTICLE XI - INDEPENDENT CONTRACTOR**

**A. Independent Contractor Status.** The Contractor is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

**B. Exclusion of Worker's Compensation Coverage.** The City will not be liable to the Contractor, as an independent contractor as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Contractor will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

**C. Exclusion of Unemployment Compensation Coverage.** The Contractor, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E) and neither the Contractor nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) the Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this contract; (b) the services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and (c) the Contractor has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

**D. Waiver of Benefits.** The Contractor, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

#### **ARTICLE XII - NOTICE**

**A. In General.** Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

**NAME AND ADDRESS OF THE CITY DEPARTMENT RESPONSIBLE FOR  
MONITORING THIS AGREEMENT**

&

City Attorney  
City of New Orleans  
1300 Perdido Street, Suite 5E03  
New Orleans, LA 70112

2. To the Contractor:

**NAME AND ADDRESS OF POINT OF CONTACT FOR CONTRACTOR TO  
RECEIVE NOTICES**

**B. Effectiveness.** Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

**C. Notification of Change.** Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

**ARTICLE XIII - ADDITIONAL PROVISIONS**

**A. Amendment.** No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

**B. Assignment.** This Agreement and any part of the Contractor's interest in it are not assignable or transferable without the City's prior written consent.

**C. Choice of Law.** This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of law's provisions.

**D. Conflicting Employment.** To ensure that the Contractor's efforts do not conflict with the City's interests, and in recognition of the Contractor's obligations to the City, the Contractor will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Contractor will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Contractor's performance of this Agreement. The City will make the final determination whether the Contractor may accept the other employment.

**E. Construction of Agreement.** Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

**F. Entire Agreement.** This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

**G. Exhibits.** The following exhibits will be and are incorporated into this Agreement: *[List of all exhibits to incorporate in the Agreement.]*

**H. Jurisdiction.** The Contractor consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Contractor.

**I. Limitations of the City's Obligations.** The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

**J. No Third Party Beneficiaries.** This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

**K. Non-Exclusivity.** This Agreement is non-exclusive and the Contractor may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

**L. Non-Waiver.** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

**M. Order of Documents.** In the event of any conflict between the provisions of this Agreement any incorporated documents, the terms and conditions of the documents will apply in this order: the Agreement; *[List of all incorporated documents in descending order.]*

**N. Ownership Interest Disclosure.** The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes of this provision, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the City may, after 30 days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

**O. Ownership of Records.** Upon final payment, all data collected and all products of work prepared, created or modified by Contractor in the performance of this Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, but excluding the Contractor's personnel and administrative records and any tools, systems, and information used by the Contractor to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "Work Product") will be the exclusive property of City and the City will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. No Work Product may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Contractor's consent and for no additional consideration to the Contractor.

**P. Prohibition of Financial Interest in Agreement.** No elected official or employee of the City

shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of Contractor, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to Contractor pursuant to this Agreement without regard to Contractor's otherwise satisfactory performance of the Agreement.

**Q. Prohibition on Political Activity.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

**R. Remedies Cumulative.** No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

**S. Severability.** Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

*[This provision or a similar one must be added if the agreement is paid for by federal funds (CDBG, FEMA, HUD, else):]*

**T. Special Conditions for XXXX Contracts.** The "XXXX Compliance Provisions for Professional Services Contracts," attached as Exhibit " " to this Agreement, are expressly incorporated in the Agreement and will be effective, notwithstanding any provision of the Agreement or any incorporated documents, to the contrary, upon the City's notice to the Contractor that the City intends to seek reimbursement from the XXXXX Program in connection with the work to be performed under this Agreement.

**U. Subcontractor Reporting.** The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. For any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within 30 days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty 30 days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

**V. Survival of Certain Provisions.** All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, choice of law, and **IDENTIFY ANY OTHER PROVISIONS THAT SHOULD SURVIVE TERMINATION** shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

**W. Terms Binding.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

*[This is a new provision under which the City will now accept a digital copy of the signed agreement sent via email by the contractor/vendor/consultant instead of an original via regular mail.*

*However, acceptance by the City is conditioned upon 3 elements: (1) this provision must be inserted in the agreement, (2) the signature on the original must be in BLUE INK, and (3) the digital copy must be in color (no black and white digital copy).]*

**ARTICLE XV - ELECTRONIC SIGNATURE AND DELIVERY**

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

**[The remainder of this page is intentionally left blank]**

**[SIGNATURES CONTAINED ON NEXT PAGE]**



IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Agreement.

**CITY OF NEW ORLEANS**

BY: \_\_\_\_\_  
LaTOYA CANTRELL, MAYOR

Executed on this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_

**FORM AND LEGALITY APPROVED:**  
**Law Department**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**NAME OF CONTRACTOR**

BY: \_\_\_\_\_  
**NAME AND TITLE OF INDIVIDUAL INDICATED IN PROOF OF SIGNING  
AUTHORITY**

\_\_\_\_\_  
**FEDERAL TAX I.D. OR SOCIAL SECURITY NO.** *[Do not insert this number in any drafts of the agreement. This information is confidential and should only be filled out by contractor/vendor/consultant when the individual signs the agreement. This information shall not be published]*



**City of New Orleans, Louisiana  
Request for Proposals  
COVID-19 Mass Feeding Initiative  
June 1, 2020**

**Attachment “J”**

**HUD COMPLIANCE PROVISIONS  
FOR  
DIRECT GRANTEE  
CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS**

**CONTENTS**

1. EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)
2. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS
3. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION
4. CERTIFICATION OF NONSEGREGATED FACILITIES
5. CIVIL RIGHTS
6. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974
7. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 - COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES (Section 3 Clause)
8. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)
9. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED
10. AGE DISCRIMINATION ACT OF 1975
11. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS
12. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS AND ACCIDENT PREVENTION
13. FLOOD DISASTER PROTECTION
14. ACCESS TO RECORDS - MAINTENANCE OF RECORDS
15. INSPECTION
16. REPORTING REQUIREMENTS
17. CONFLICT OF INTEREST
18. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED
19. PATENTS
20. COPYRIGHT
21. TERMINATION FOR CAUSE
22. TERMINATION FOR CONVENIENCE
23. ENERGY EFFICIENCY
24. SUBCONTRACTS
25. DEBARMENT, SUSPENSION, AND INELIGIBILITY
26. PROTECTION OF LIVES AND HEALTH

- 27. BREACH OF CONTRACT TERMS
- 28. PROVISIONS REQUIRED BY LAW DEEMED INSERTED
- 29. CHANGES
- 30. PERSONNEL
- 31. ANTI-KICKBACK RULES
- 32. ASSIGNABILITY
- 33. INTEREST OF CONTRACTOR
- 34. POLITICAL ACITIVITY
- 35. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET
- 36. DISCRIMINATION DUE TO BELIEFS
- 37. CONFIDENTIAL FINDINGS
- 38. LOBBYING
- 39. FEDERAL LABOR STANDARDS PROVISIONS
- 40. SOLID WASTE DISPOSAL ACT
- 41. CONFIDENTIALITY
- 42. REPAYMENT OF FUNDS
- 43. DUPLICATION OF BENEFITS
- 44. LIMITED ENGLISH PROFICIENCY (LEP)

**1. EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)**  
(Applicable to contracts and subcontracts exceeding \$10,000)

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.
- C. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.

- E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.
- F. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Contractor will include the provisions of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each Contractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Contractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

## **2 STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS**

(Applicable to contracts and subcontracts exceeding \$10,000)

### **A. As used in these specifications:**

- (1) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- (2) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- (3) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- (4) "Minority" includes:
  - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South America or other Spanish Culture or origin, regardless of race);

- (c) Asian and Pacific Islander (all persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- B. When the Contractor, or any contractor, at any time, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract, in excess of \$10,000, the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- C. If the Contractor is participating (pursuant to 41 CFR 60 4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in compliance with the provisions of any such Hometown Plan. Each Contractor or Contractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or contractors toward a goal in an approved Plan does not excuse any covered Contractor's or contractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- D. The Contractor shall implement the specific affirmative action standards provided in paragraphs G(1) through G(16) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing contracts in geographical areas where they do not have a federal or federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- E. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- F. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities.

Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

- G. The Contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
- (1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - (2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
  - (3) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
  - (4) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement have not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
  - (5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly includes minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under G(2) above.
  - (6) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO

policy on a bulletin board accessible to all employees at each location where construction work is performed.

- (7) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Contractors with whom the Contractor does or anticipates doing business.
- (9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- (11) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60.3.
- (12) Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- (13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

- (14) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - (15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitation to minority and female Contractor associations and other business associations.
  - (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- H. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (G(1) through G(16)). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under G(1) through G(16) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be a defense for the Contractor's non-compliance.
- I. A single goal for minorities and a separate single goal for women has been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- J. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any persons because of race, color, religion, sex, or national origin.
- K. The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to E.O. 11246.
- L. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to E.O. 11246, as amended.
- M. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph G of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in



accordance with 41 CFR 60 4.8.

- N. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number where assigned, social security number, race, sex, status (e.g., mechanic, apprenticeship trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
- O. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

### **3. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION**

(Applicable to contracts and subcontracts exceeding \$10,000)

- A. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
- B. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographic area located outside of the covered area, it shall apply the goals established for such geographic area where the work is actually performed.

With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60 4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60 4.3 (a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60 4. Compliance with the goals will be measured against the total work hours performed.



- C. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the sub-contract; and the geographical area in which the contract is to be performed.
- D. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed, giving the State, parish, and city, if any):

**4. CERTIFICATION OF NON-SEGREGATED FACILITIES**  
(Applicable to contracts and subcontracts exceeding \$10,000)

By the submission of this bid, the bidder, offeror, applicant or Contractor certifies that he/she does not maintain or provide for his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or Contractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

He/she further agrees that (except where he/she has obtained for specific time periods) he/she will obtain identical certification from proposed contractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed contractors (except where proposed contractors have submitted identical certifications for specific time periods).

**5. CIVIL RIGHTS**

The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

**6. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974**

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

7. **SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 - (Section 3 Clause)** (applicable to contracts and subcontracts exceeding \$100,000 funded by Section 3 covered assistance)

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
- D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the Contractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any Contractor where the Contractor has notice or knowledge that the Contractor has been found in violation of the regulations in 24 CFR part 135.
- E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment

opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.

- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

**8 SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)**  
(Applicable to contracts and subcontracts exceeding \$10,000)

- A. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- F. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued

pursuant to Section 503 of the Act, so that such provisions will be binding upon each Contractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

**9. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED**

The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

**10. AGE DISCRIMINATION ACT OF 1975**

The Contractor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

**11. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS**

(Applicable to contracts and subcontracts exceeding \$100,000)

The Contractor and all contractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

In addition to the foregoing requirements, all nonexempt Contractors and contractors shall furnish to the owner, the following:

- A. A stipulation by the Contractor or contractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15, as amended.
- B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857 c 8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued there under.
- C. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.
- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract

and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

## **12 SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS AND ACCIDENT PREVENTION**

### **A. Lead-Based Paint Hazards**

The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. The Contractor and contractors shall comply with the provisions for the elimination of lead-based paint hazards under Subpart B of said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.14 (f) thereof.

### **B. Use of Explosives**

When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, state and federal laws in purchasing and handling explosives. The Contractor shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced, and the material shall be covered with suitable timber, steel or rope mats. The Contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

### **C. Danger Signals and Safety Devices (Modify as Required)**

The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Owner may have such lights and Barricades installed and charge the cost of this work to the Contractor. Such action by the Owner does not relieve the Contractor of any liability incurred under these specifications or contract.

## **13 FLOOD DISASTER PROTECTION**

This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93 234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

#### **14. ACCESS TO RECORDS - MAINTENANCE OF RECORDS**

The Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the final closeout of the grant.

#### **15. INSPECTION**

The authorized representative and agents of the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

#### **16. REPORTING REQUIREMENTS**

The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Owner.

#### **17. CONFLICT OF INTEREST**

- A. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.
- B. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise there from, but this



provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

**18. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED**

(Applicable to contracts and subcontracts of \$10,000 and under)

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. Contractors shall incorporate foregoing requirements in all subcontracts.

**19. PATENTS**

- A. The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.
- B. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized licensee, direct by the Owner and not by or through the Contractor.
- C. If the Contractor uses any design device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.



## **20. COPYRIGHT**

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Contractor for copy-right purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

## **21. TERMINATION FOR CAUSE**

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Owner shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the Owner, become the Owner's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the contract by the Contractor, and the Owner may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined.

## **22. TERMINATION FOR CONVENIENCE**

The Owner may terminate this contract at any time by giving at least ten (10) days' notice in writing to the Contractor. If the contract is terminated by the Owner as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

## **23. ENERGY EFFICIENCY**

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

## **24. SUBCONTRACTS**

- A. The Contractor shall not enter into any subcontract with any contractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracting programs by any agency of the United States Government or the State of Louisiana.
- B. The Contractor shall be as fully responsible to the Owner for the acts and omissions of the Contractor's contractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Contractor.

- C. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to

the work to bind contractor to the Contractor by the terms of the contract documents insofar as applicable to the work of contractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.

- D. Nothing contained in this contract shall create any contractual relation between any Contractor and the Owner.

## **25. DEBARMENT, SUSPENSION, AND INELIGIBILITY**

The Contractor represents and warrants that it and its contractors are not debarred, suspended, or placed in ineligibility status under the provisions of 2 CFR 200.213 (government debarment and suspension regulations).

## **26. PROTECTION OF LIVES AND HEALTH**

The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Owner may determine to be reasonably necessary.

## **27. BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's contractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

## **28. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

## **29. CHANGES**

The Owner may, from time to time, request changes in the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation which are mutually agreed upon by and between the Owner and the Contractor, shall be incorporated in written and executed amendments to this Contract.

### **30. PERSONNEL**

The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

All the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

### **31. ANTI-KICKBACK RULES**

Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to insure compliance by the contractors with such regulations, and shall be responsible for the submission of affidavits required of contractors there under except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

### **32. ASSIGNABILITY**

The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Owner provided that claims for money due or to become due the Contractor from the Owner under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Owner.

### **33. INTEREST OF CONTRACTOR**

The Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

**34. POLITICAL ACTIVITY**

The Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

**35. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET**

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars 2 CFR 200, as they relate to the use of Federal funds under this contract.

**36. DISCRIMINATION DUE TO BELIEFS**

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

**37. CONFIDENTIAL FINDINGS**

All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

**38. LOBBYING**

The Contractor certifies, to the best of his or her knowledge and belief that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**39. FEDERAL LABOR STANDARDS PROVISIONS**

The Contractor shall abide by the requirements of the Federal Labor Standards Provisions (form HUD-4010) as follows.

**Federal Labor Standards Provisions**  
**U.S. Department of Housing and Urban Development**  
**Office of Labor Relations**

**Applicability**

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its contractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(i) **(a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to

the wage rates contained in the wage determination.

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1) (i) (b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(ii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iii) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2 Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any contractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its



designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or Contractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3 (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b) (2) (B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a) (3) (i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014- 1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all contractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

**(b)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Contractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;

**(2)** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

**(3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe



benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the Contractor or Contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or contractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Contractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4 Apprentices and Trainees.**

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(ii) Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The Contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

**6. Subcontracts.** The Contractor or Contractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the contractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Contractor or lower tier Contractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a Contractor and a Contractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes

within the meaning of this clause include disputes between the Contractor (or any of its contractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false.... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No Contractor or Contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation;** liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the Contractor and any Contractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own

action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or

contractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or contractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**(4) Subcontracts.** The Contractor or contractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the contractors to include these

clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Contractor or lower tier contractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable only where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

**(3)** The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each contractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

#### **40. SOLID WASTE DISPOSAL ACT**

The Grantee shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements listed below include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) AT 40 CFR part 247 containing the highest percentage of recovered materials, practicable, consistent with maintaining a satisfactory level of competition.

**Applicability.**(a)(1) This guideline applies to all procurement actions using federal funding and involving items designated by EPA in this part, where the purchase price of the item exceeds \$10,000, the value of the quantity acquired by the preceding fiscal year exceeds \$10,000. This guideline shall require that all solid waste management services procurements are conducted in a manner that maximizes energy and resource recovery. (2) This guideline applies to any public agency using appropriated Federal funds to procure designated items, and to persons contracting with any such

agencies with respect to work performed under such contracts. (3) The \$10,000 threshold applies to public agencies as a whole rather than to agency subgroups such as regional offices or sub-agencies of a larger department or agency.

(b) The term *procurement actions* includes:

(1) Purchases made directly by a procuring agency or purchases made directly by any person (e.g., a contractor) in support of work being performed for a procuring agency using federal funds

(2) Any purchases of designated items made “indirectly” by a procuring agency, as in the case of procurements resulting from grants, loans, funds, and similar forms of disbursements of monies.

(c)(1) This guideline does not apply to purchases of designated items which are unrelated to or incidental to Federal funding, i.e., not the direct result of a contract or agreement with, or a grant, loan, or funds disbursement to, a procuring agency.

#### **41. CONFIDENTIALITY**

The Contractor shall comply with the Confidentiality regulations, per 24 CFR 574.440. Per 24 CFR 574.440, “the grantee shall agree, and shall ensure that each project sponsor agrees, to ensure the confidentiality of the name of any individual assisted under this part and any other information regarding individuals receiving assistance.” The Contractor shall ensure all documentation and written agreements protect the confidentiality of all individuals/ agencies funded or receiving any assistance under this grant.

#### **42. REPAYMENT OF FUNDS**

The Contractor acknowledges that funds provided through this Agreement are Federal funds administered by HUD and that all funds provided by this Agreement are subject to audit, disallowance, and repayment. Any disagreement with adverse findings by HUD may be challenged pursuant to Federal regulations, however, the Contractor shall promptly return to Grantee any and all funds that are found to be ineligible, unallowable, unreasonable, a duplication of benefits, or non-compliance, no matter the cause. This clause shall survive indefinitely the termination of this Agreement for any reason.

#### **43. DUPLICATION OF BENEFITS**

The Contractor shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC §5155). The Contractor must comply with HUD’s requirements for duplication of benefits imposed by Federal Register notice on the City (81 Fed. Reg. 36564). The Federal Register notice requires compliance with the following HUD guidance documents: (1) the guidance published by HUD in the Federal Register on November 16, 2011 (76 Fed. Reg. 71060); and

(2) the guidance document entitled “HUD Guidance on Duplication of Benefit Requirements and Provision of CDBG Disaster Recovery (DR) Assistance,” issued on July 25, 2013.

#### **44. LIMITED ENGLISH PROFICIENCY (LEP)**

**Assistance to Those with Limited English Proficiency.** The Contractor agrees to take all reasonable actions to communicate with persons who have Limited English Proficiency (LEP) to ensure that such persons have meaningful access and an equal opportunity to participate in the program(s) and/or services funded under this Agreement.

**City of New Orleans, Louisiana  
Request for Proposals  
COVID-19 Mass Feeding Initiative  
June 1, 2020**

**Attachment “K”**

**SPECIAL COMPLIANCE CONDITIONS FOR FEMA – FUNDED CONTRACTS**

The Contractor is advised that this project is to be funded by FEMA. Notwithstanding any provision of the Agreement to the contrary, the following terms and conditions:

- A. TERMINATION FOR CAUSE:** The City and the Contractor shall each have the right to terminate this Agreement for cause, effective immediately upon the giving of written notice to the other party of its intent to terminate and the reasons therefore. If the termination for cause is subsequently challenged in a court of law and if the challenging party prevails, the termination for cause shall be deemed to be a termination for convenience and shall be effective thirty (30) days from the date that the original written notice of termination for cause was given to the challenging party and no further notice shall be required.
- B. TERMINATION FOR CONVENIENCE:** The City shall have the right to terminate this Agreement without cause by giving the Contractor written notice of its intent to terminate at least thirty (30) days prior to the date of termination. In the event that the City elects to terminate for convenience, the City shall be obligated to pay the Contractor only for those Services performed up to and through the date of termination.
- C. RECORDS RETENTION AND ACCESS:**
- The Contractor shall grant the City, the State of Louisiana, the Federal Emergency Management Agency, the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers, and records of the Engineer which are pertinent to this Agreement for the purpose of making audit, examination, excerpts, and
- The Contractor shall retain all required records for five (5) years or until such time as the State of Louisiana or the City of New Orleans make final payments and all other pending matters related to the Agreement are closed.
- D. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS:** As applicable, the Contractor shall comply with each of the following, all of which are incorporated herein by reference.
- Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of



Labor regulations (41 CFR chapter 60);

- The Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3);
- Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5);
- Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15);
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871)
- Unless duly suspended or revoked, the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5)
- Any and all applicable requirements as required by Federal Uniform Administrative Requirements (Appendix II to 2 CFR Part 200).

**E. DEBARMENT, SUSPENSION, AND INELIGIBILITY:** The Contractor represents and warrants that it and its sub-recipients are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

**F. REMEDIES AND SANCTIONS AGAINST ENGINEER’S DEFAULT:** The City retains all rights and recourse under Louisiana law to enforce this Agreement or recover damages in connection with any Contractor breach or violation hereof.